

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-30696-GFK
Chapter 13

Adam Dave Patnode and Kimberly Kay Patnode,

Debtor(s).

***NOTICE OF HEARING AND
MOTION FOR RELIEF FROM STAY***

TO: Debtor(s) and Attorney for Debtor(s); Jasmine Keller, Chapter 13 Trustee; U.S. Trustee; and other parties in interest.

1. U.S. Bank Home Mortgage, a secured creditor of Debtor(s), by its undersigned attorney, moves the Court for the relief requested below, and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at **9:30 am on Wednesday, September 22, 2004**, before the Honorable Dennis D. O'Brien, in Courtroom No. 228A, at the U.S. Federal Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101.

3. Any response to this motion must be filed and delivered not later than Friday, September 17, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than Monday, September 13, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This motion arises under 11 U.S.C. § 362 and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3. U.S. Bank Home Mortgage seeks relief from the automatic stay of 11 U.S.C. § 362 with respect to certain real property owned by Debtor(s).

5. The petition commencing this Chapter 13 case was filed on February 9, 2004 and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding.

6. By mortgage dated 12/20/2001 in the original principal amount of \$116,300 (the "Mortgage"), U.S. Bank Home Mortgage holds a mortgagee's interest in the following real property (the "Property"):

Lot 6, Block 2, Oakdale Hills 3rd, subject to burdens and together with the benefits of common area dedications as contained in the Revised Declaration of Covenants, Restrictions, and Easements regarding Charter Oak Homeowners Association, dated February 5, 1973, filed February 13, 1973, in the office of the Register of Deeds in and for Washington County as Document No. 307873 and as amended in Document No. 316466 dated July 16, 1973, filed October 12, 1973 and as also amended in Document No. 321523 dated February 5, 1974, filed April 3, 1974.

The Mortgage was filed in the offices of such County. A copy of the first page of the Mortgage is attached hereto as Exhibit A.

7. The Chapter 13 Plan requires payments to U.S. Bank Home Mortgage. On information and belief, a delinquency under the Plan exists for the months of July and August 2004 totaling at least \$1,611.31. . The outstanding balance due U.S. Bank Home Mortgage under the terms of the note is \$118,984.31 plus interest, late fees and attorneys fees. On information and belief, the fair market value of the Property is approximately \$140,000.00, less other applicable mortgages.

8. The failure of the Debtor(s) to make payments pursuant to the Chapter 13 Plan or otherwise provide U.S. Bank Home Mortgage with adequate protection of its interest in the Property constitutes cause, within the meaning of 11 U.S.C. § 362(d)(1) and 362(d)(2), entitling U.S. Bank Home Mortgage to relief from the stay.

9. U.S. Bank Home Mortgage requests that any order modifying the automatic stay be effective immediately as allowed under Federal Bankruptcy Rule 4001(a)(3).

10. If testimony is necessary as to any facts relevant to this motion, S. Young, or some other representative of Movant, will testify on behalf of U.S. Bank Home Mortgage.

11. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

WHEREFORE, U.S. Bank Home Mortgage respectfully moves the Court for an order: (i) modifying the automatic stay of 11 U.S.C. § 362 so as to permit U.S. Bank Home Mortgage to foreclose the Mortgage on the Property, (ii) finding that Bankruptcy Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure is not applicable and (iii) granting such other relief as may be just and equitable.

Dated: August 23, 2004

STEWART, ZLIMEN & JUNGERS

By /e/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
430 Oak Grove Street, Ste. 200
Minneapolis, Minnesota 55403
(612) 870-4100

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA
ST. PAUL DIVISION

IN RE:

ADAM DAVE PATNODE
SSN XXX-XX-0393
KIMBERLY KAY PATNODE
SSN XXX-XX-3135

DEBTORS

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CASE NO. 04-30696-GFK

CHAPTER 13

AFFIDAVIT OF LISA ROGERS

Lisa Rogers, being duly sworn to oath, deposes and states:

1. That he/she is the custodian of records of U. S. Bank Home Mortgage.
2. U. S. Bank Home Mortgage is now the holder and/or servicing agent of a mortgage on real property on which the Debtors have an interest. The Debtors' indebtedness is evidenced by that certain mortgage deed dated December 20, 2001, executed by . The property is located in County, Minnesota and is legally described as follows, to-wit:

SEE ATTACHED EXHIBIT A

3. That he/she has reviewed the account records relating to Patnode mortgage loan, account no. xxxxxx5148.
4. That as of August 17, 2004, the following amounts were owing on this account:

Unpaid principal	\$	114,598.92
Interest from February 1, 2004 through August 17, 2004	\$	4,040.96
Attorney's Fees	\$	700.00
Late Charges	\$	175.89
Escrow Advance	\$	79.56
Other Charges	\$	85.50
		<hr/>
Total	\$	119,680.83

5. That the mortgage loan is delinquent for monthly mortgage payments for the months of July 2004, August 2004 in the amount of \$1,548.48.

6. U. S. Bank Home Mortgage has had to obtain counsel to represent it in bringing this Motion and will incur additional legal expenses and attorney fees.

7. This affidavit is given in support of the Motion of U. S. Bank Home Mortgage, as servicing agent for Federal National Mortgage Association ("Fannie Mae") for relief from the automatic stay.

The foregoing facts are of my own personal knowledge and belief, and if called upon to appear as a witness, I could, and would, testify competently thereto. I declare under penalty of perjury that to the best of my knowledge the foregoing facts are true and correct.

U. S. Bank Home Mortgage

By: *Lisa Rogers*
Lisa Rogers
Bankruptcy Representative

DATED: August 18, 2004

SUBSCRIBED AND SWORN TO BEFORE ME on August 18, 2004.

Eleanor L. Zuccaro
Notary Public in and for the State of Arizona

8049-N-0494
minn



Notary Public State of Arizona
Maricopa County
Eleanor L. Zuccaro
Expires June 16, 2007

8049-N-0494
minn

NBS 07/08/04

3220710



Office of the
County Recorder
Washington County, MN

Certified filed and/or recorded on:
2002/03/15 9:09:00 AM

3220710



County Recorder

Rich Thompson

WASHINGTON COUNTY

Receipt No 87013 Date: 01/26/2002
Registration tax hereon of \$267.49 Paid
MN Conservation Fund M.S. 473H \$5.00 Paid
Molly F. O'Rourke, Auditor by BJBecler

24 -

(Space Above This Line For Recording Data)

LOAN: # 7890765148

MORTGAGE

2

Return To: FIRSTAR BANK, N.A.
1550 E. 79TH STREET
BLOOMINGTON, MN 55425

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 1, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated **DECEMBER 30, 2001** together with all Riders to this document.

MINNESOTA Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
01-40535 / 224804W

Form 3024 1/01

Page 1 of 15

Initials: *SLP*

RETURN TO:
FIRSTAR BANK



VMP MORTGAGE FORMS - (800)521-7281

(B) "Borrower" is,
 ADAM PATNODE , SINGLE AND KIMBERLY SCHWARTZ , SINGLE

Borrower is the mortgagor under this Security Instrument.
 (C) "Lender" is FIRSTAR BANK, N.A.

Lender is a NATIONAL ASSOCIATION
 organized and existing under the laws of THE UNITED STATES OF AMERICA.
 Lender's address is 4801 FREDERICA STREET, OWENSBORO, KY 42301

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated DECEMBER 20, 2001.
 The Note states that Borrower owes Lender ONE HUNDRED SIXTEEN THOUSAND THREE HUNDRED
 AND NO/100 Dollars
 (U.S.\$ 116,300.00) plus interest. Borrower has promised to pay this debt in regular Periodic
 Payments and to pay the debt in full not later than JANUARY 1, 2032

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the
 Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges
 due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following
 Riders are to be executed by Borrower (check box as applicable):

<input type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Balloon Rider	<input checked="" type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> 1-4 Family Rider
<input type="checkbox"/> VA Rider	<input type="checkbox"/> Biweekly Payment Rider	<input type="checkbox"/> Other(s) [specify]

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations,
 ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final,
 non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other
 charges that are imposed on Borrower or the Property by a condominium association, homeowners
 association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check,
 draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument,
 computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an
 account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine
 transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(K) "Escrow Items" means those items that are described in Section 3.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No.04-30696-GFK

Chapter 13

Adam Dave Patnode and Kimberly Kay Patnode,

Debtor(s).

***MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY***

U.S. Bank Home Mortgage submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

U.S. Bank Home Mortgage holds a valid, duly perfected mortgage on real property owned by Debtor(s). Presently, there is a delinquency under the terms of the note secured by the Mortgage with respect to monthly payments due for the months of July and August 2004 in a total amount exceeding \$1,611.31 plus continuing late charges, interest and attorneys' fees. The outstanding balance due U.S. Bank Home Mortgage under the terms of the note is \$118,984.31 plus interest, late fees and attorneys fees. On information and belief, the fair market value of the Property is approximately \$140,000.00.

ARGUMENT

Pursuant to Section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such [creditor]." 11 U.S.C. § 362(d)(1). Here, the payments have not been made by the Debtor(s) under the Chapter 13 Plan.

U.S. Bank Home Mortgage does not have, and has not been offered, adequate protection of its interest in the Property. The Plan of the Debtor(s) fails to provide U.S. Bank Home Mortgage with the indubitable equivalent of its claim. Such circumstances constitute cause, within the meaning of Section 362(d)(1), entitling U.S. Bank Home Mortgage to relief from the stay. See Reinbold v. Dewey

County Bank, 942 F.2d 1304, 1306-07 (8th Cir. 1991) (debtor's failure to comply with plan supports bankruptcy court's decision to grant relief from the automatic stay for cause); In re Wieseler, 934 F.2d 965, 967 (8th Cir. 1991) (debtor's failure to comply with stipulation provided cause for dissolving automatic stay). See also First Federal Savings and Loan Ass'n. of Minneapolis vs. Whitebread (In re Whitebread), 18 B.R. 192 (Bankr. D. Minn. 1982); In re Quinlan, 12 B.R. 516 (Bankr. W.D. Wis. 1981); In re Caulk, 9 B.R. 242 (Bankr. E.D. Penn. 1981).

CONCLUSION

For all the reasons set forth herein, U.S. Bank Home Mortgage is entitled to an order terminating the automatic stay of 11 U.S.C. § 362 and authorizing it to foreclose its interest in the Property.

Dated: August 23, 2004

STEWART, ZLIMEN & JUNGERS

By /s/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
430 Oak Grove Street, Ste. 200
Minneapolis, Minnesota 55403
(612) 870-4100

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Adam Dave Patnode and Kimberly Kay Patnode

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-30696-GFK

Bradley J. Halberstadt, an agent of Stewart, Zlimen & Jungers, attorney(s) licensed to practice law in this court, with office address of 430 Oak Grove Street, Ste. 200, Minneapolis, Minnesota 55403, declares that on the date set forth below, I served the annexed **Notice of Hearing and Motion For Relief From Stay** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Roseville, Minnesota addressed to each of them as follows:

United States Trustee
Suite 1015
300 South 4th Street
Minneapolis, MN 55415

(Attorney for Debtor(s))
Curtis K. Walker
4356 Nicollet Ave. S.
Minneapolis, MN 55409

(Trustee)
Jasmine Keller
12 S 6th Street Suite 310
Minneapolis, MN 55402

(Co-Obligor)

(Debtor(s))
Adam Dave Patnode
1478 Goodwin Ave. N.
Oakdale, MN 55128

Kimberly Kay Patnode
1478 Goodwin Ave. N.
Oakdale, MN 55128

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: August 23, 2004

Signed: /e/ Bradley J. Halberstadt

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-30696-GFK
Chapter 13

Adam Dave Patnode and Kimberly Kay Patnode,

Debtor(s).

***ORDER GRANTING
MOTION FOR RELIEF FROM STAY***

The above-entitled matter came before the Court for hearing on Wednesday, September 22, 2004 at the motion of U.S. Bank Home Mortgage seeking relief from the automatic stay of 11 U.S.C. § 362. Appearances were noted in the Court's record. Based upon the proceedings on said date, the statements of counsel, and all of the files and records herein, the Court now finds that cause exists entitling U.S. Bank Home Mortgage to the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED that:

(i) the automatic stay of 11 U.S.C. § 362 is immediately terminated as to U.S. Bank Home Mortgage, and U.S. Bank Home Mortgage, and/or its assignees and/or successors in interest, is hereby authorized to foreclose its mortgage on the following property:

Lot 6, Block 2, Oakdale Hills 3rd, subject to burdens and together with the benefits of common area dedications as contained in the Revised Declaration of Covenants, Restrictions, and Easements regarding Charter Oak Homeowners Association, dated February 5, 1973, filed February 13, 1973, in the office of the Register of Deeds in and for Washington County as Document No. 307873 and as amended in Document No. 316466 dated July 16, 1973, filed October 12, 1973 and as also amended in Document No. 321523 dated February 5, 1974, filed April 3, 1974, and

(ii) Notwithstanding Fed R. Bankr. P. 4001(a)(3), this order is effective immediately.

Dated: _____

Dennis D. O'Brien
United States Bankruptcy Judge